

# EXHIBIT 98

Newark, DE

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY ) MDL No. 1456  
AVERAGE WHOLESALE PRICE ) Civil Action No.  
LITIGATION ) 01-12257-PBS  
-----X

THIS DOCUMENT RELATES TO: ) Hon. Patti B.  
United States of America ex rel. ) Saris  
Ven-A-Care of the Florida Keys, )  
Inc. v. Dey, Inc., et al., Civil )  
Action No. 05-11084-PBS; and )  
United States of America ex rel. )  
Ven-A-Care of the Florida Keys, )  
Inc. v. Boehringer Ingelheim )  
Corp., et al., Civil Action No. )  
07-10248-PBS )  
-----X

Videotaped deposition of  
THE DELAWARE DIVISION OF MEDICAID AND MEDICAL  
ASSISTANCE by CYNTHIA DENEMARK  
December 9, 2008 - Newark, Delaware

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 Counsel for the United States of America</p> <p>4 UNITED STATES ATTORNEY'S OFFICE</p> <p>5 BY: BARBARA HEALY SMITH, ESQUIRE</p> <p>6 barbara.h.smith@usdoj.gov</p> <p>7 Assistant U.S. Attorney</p> <p>8 John J. Moakley U.S. Courthouse</p> <p>9 1 Courthouse Way</p> <p>10 Boston, Massachusetts 02110</p> <p>11 617-748-3100</p> <p>12</p> <p>13 Counsel for the State of Delaware</p> <p>14 DEPARTMENT OF JUSTICE</p> <p>15 BY: A. ANN WOOLFOLK, ESQUIRE</p> <p>16 ann.woolfolk@state.de.us</p> <p>17 BY: SUSAN PURCELL, ESQUIRE</p> <p>18 spurcell@state.de.us</p> <p>19 Carvel Office Building, 6th Floor</p> <p>20 820 N. French Street</p> <p>21 Wilmington, Delaware 19801</p> <p>22 302-577-8400</p>	<p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 Counsel for Abbott Laboratories</p> <p>4 JONES DAY</p> <p>5 BY: HILARY A. RAMSEY, ESQUIRE</p> <p>6 haramsey@jonesday.com</p> <p>7 51 Louisiana Avenue, N.W.</p> <p>8 Washington, D.C. 2001-2113</p> <p>9 202-879-3939</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13</p> <p>14 Chris Weiss, Videographer</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 Counsel for EDS and the Witness</p> <p>4 EDS, LLC</p> <p>5 BY: ANNE SHUTTEE, ESQUIRE</p> <p>6 anne.shuttee@eds.com</p> <p>7 5400 Legacy Drive</p> <p>8 H3-3A-05</p> <p>9 Plano, Texas 75024</p> <p>10 972-605-5509</p> <p>11</p> <p>12 Counsel for Dey, Inc., Dey, L.P.</p> <p>13 and Dey L.P., Inc.</p> <p>14 KELLEY DRYE &amp; WARREN LLP</p> <p>15 BY: BRENDAN J. CYR, ESQUIRE</p> <p>16 bcyr@kelleydrye.com</p> <p>17 101 Park Avenue</p> <p>18 New York, New York 10178</p> <p>19 212-808-5021</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: Cynthia Denemark PAGE</p> <p>4 Examination By Mr. Cyr..... 008</p> <p>5</p> <p>6 D E Y E X H I B I T S</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit Dey 602 - Amended Notice of Deposition</p> <p>9 of the State of Delaware,</p> <p>10 Division of Medicaid and</p> <p>11 Medical Assistance..... 011</p> <p>12 Exhibit Dey 603 - Resume of Denemark..... 035</p> <p>13 Exhibit Dey 604 - Contract for items or</p> <p>14 services delivered to</p> <p>15 Delaware Medical Assistance</p> <p>16 program eligibles in the</p> <p>17 Department of Health and</p> <p>18 Social Services..... 070</p> <p>19 Exhibit Dey 605 - Pharmacy Billing Manual,</p> <p>20 Revision Table..... 076</p> <p>21 Exhibit Dey 606 - Pharmacy Provider Specific</p> <p>22 Policy, Revision Table..... 096</p>

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<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOTAPE OPERATOR: This is Chris</p> <p>4 Weiss, a Certified Legal Videographer, and the</p> <p>5 court reporter today is Kathy McHugh. We are</p> <p>6 here representing Henderson Legal Services,</p> <p>7 Washington, D.C. The time is 9:17 a.m. on</p> <p>8 Tuesday, December 9th, 2008.</p> <p>9 We are documenting the videotaped</p> <p>10 deposition of Cynthia Denemark, who is a</p> <p>11 representative of the State of Delaware</p> <p>12 Department of Health and Social Services, in the</p> <p>13 matter of In Re: Pharmaceutical Industry,</p> <p>14 Average Wholesale Price Litigation, MDL No. 1456,</p> <p>15 Master File No. 01-CV-12257-PBS, in the United</p> <p>16 States District Court for the District of</p> <p>17 Massachusetts.</p> <p>18 We are at the location of the Hilton</p> <p>19 Wilmington Christiana, 100 Continental Drive,</p> <p>20 Newark, Delaware.</p> <p>21 Will the attorneys please state their</p> <p>22 appearance for the record.</p>	<p>1 A. C-Y-N-T-H-I-A. Last name, D-E-N-E-M-A-</p> <p>2 R-K.</p> <p>3 Q. And could you please give us your</p> <p>4 business address?</p> <p>5 A. 248 Chapman Road, Suite 200, Newark,</p> <p>6 Delaware, 19702.</p> <p>7 Q. And your home address, please?</p> <p>8 A. 3 Timber Ridge Court, Newark, Delaware,</p> <p>9 19711.</p> <p>10 Q. I'm just going to go over some general</p> <p>11 ground rules. First of all, you understand that</p> <p>12 you're under oath today and required to tell the</p> <p>13 truth?</p> <p>14 A. Yes.</p> <p>15 Q. If I ask a question and you don't</p> <p>16 understand the question, don't try to answer it.</p> <p>17 Please ask me to clarify the question.</p> <p>18 A. Understood.</p> <p>19 Q. If you need a break at some point in</p> <p>20 the deposition, just let me know and we'll try to</p> <p>21 accommodate you. I might just ask that if I have</p> <p>22 a question pending that you answer the question</p>

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<p>1 AWP for a generic drug was too large, some of the</p> <p>2 -- some of the pharmacists would be reimbursed at</p> <p>3 an amount below their actual cost, their cost to</p> <p>4 acquire the drug; is that correct?</p> <p>5 A. That is not correct.</p> <p>6 MS. HEALY SMITH: Objection.</p> <p>7 BY MR. CYR:</p> <p>8 Q. Could you explain why that isn't</p> <p>9 correct.</p> <p>10 A. Yes. It's not correct because the</p> <p>11 program was concerned that if a pharmacy</p> <p>12 purchased a generic product simply based on the</p> <p>13 AWP of that NDC, that the manufacturer might</p> <p>14 inflate it, and so we wanted to bring into</p> <p>15 consideration what the overall product was and</p> <p>16 not reward smart purchasing by the providers.</p> <p>17 Q. So how was the AWP minus 14 percent and</p> <p>18 the AWP minus 16 percent, how were those decided?</p> <p>19 Why were those decided as the rates?</p> <p>20 A. The -- those were not actually the</p> <p>21 published rate for what the program was willing</p> <p>22 to pay the providers. At the time that the</p>	<p>1 benefit, so we don't have to offer it and -- to</p> <p>2 be a Medicaid program, but if we opt to provide</p> <p>3 that service, the clients must be able to within</p> <p>4 reason, and I don't know what the definition of</p> <p>5 reason, but they must be able to access those</p> <p>6 services.</p> <p>7 Q. Okay. And the concern with access, the</p> <p>8 concern that the providers were expressing to</p> <p>9 DMAA, and the reason that -- the reason that</p> <p>10 created a concern within DMAA about access was</p> <p>11 providers would drop out of the program and</p> <p>12 beneficiaries would not have access to</p> <p>13 prescription drugs?</p> <p>14 A. That's correct.</p> <p>15 Q. And do you know, is there -- is there -</p> <p>16 - strike that.</p> <p>17 And the provider's specific concern was</p> <p>18 that they would not receive adequate</p> <p>19 reimbursement under the proposed changes?</p> <p>20 MS. HEALY SMITH: Objection.</p> <p>21 THE WITNESS: I don't know what their</p> <p>22 perception might have been. I just know for fact</p>
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<p>1 published rates were available for comment,</p> <p>2 several of the large chains that supported the</p> <p>3 Medicaid program or provide services to the</p> <p>4 eligibles gave notice that they would terminate</p> <p>5 being Medicaid providers if our reimbursement was</p> <p>6 set at the proposed rate.</p> <p>7 I do not know what the proposed rate is</p> <p>8 off the top of my head. I didn't look at it</p> <p>9 because it became a moot point. We looked after</p> <p>10 the chains notified us that they were going to be</p> <p>11 nonparticipating whether we had an access issue.</p> <p>12 It was determined with the number of pharmacies</p> <p>13 that would be left to provide services that we</p> <p>14 would have an access issue, and so the secretary</p> <p>15 worked with the provider community leaders to</p> <p>16 establish a rate that would allow -- would permit</p> <p>17 them to continue being our providers.</p> <p>18 Q. You said before access issue. What do</p> <p>19 you mean by that?</p> <p>20 A. We are required as a Medicaid program</p> <p>21 that if we offer a benefit to our eligibles and</p> <p>22 by regulations the drug benefit is an optional</p>	<p>1 that they weren't going to be part of the</p> <p>2 program.</p> <p>3 BY MR. CYR:</p> <p>4 Q. And the reason they gave for</p> <p>5 withdrawing from the program was the proposed</p> <p>6 changes?</p> <p>7 A. Yes.</p> <p>8 Q. And so am I correct in assuming you</p> <p>9 don't remember the proposed changes but were they</p> <p>10 greater discounts off of AWP?</p> <p>11 A. Yes, they were.</p> <p>12 Q. And so you reduced the discounts off of</p> <p>13 AWP to meet the concerns of those providers?</p> <p>14 A. Yes.</p> <p>15 Q. And that was addressing the access</p> <p>16 issue?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know is there a federal law or a</p> <p>19 federal rule concerning -- concerning -- strike</p> <p>20 that.</p> <p>21 Is there a federal statute or a</p> <p>22 regulation that requires DMAA to reimburse</p>

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<p>1 had a recollection of --</p> <p>2 Q. Okay. The ingredient portion of the</p> <p>3 reimbursement formula, that's intended to cover</p> <p>4 the cost of acquiring the drug; is that correct?</p> <p>5 MS. HEALY SMITH: Objection.</p> <p>6 THE WITNESS: My understanding of the</p> <p>7 definition of the ingredient cost is what does it</p> <p>8 cost the pharmacy to purchase the drug.</p> <p>9 BY MR. CYR:</p> <p>10 Q. Now, when you consider the adequacy of</p> <p>11 reimbursement to a provider, you need to consider</p> <p>12 both the dispensing fee and the ingredient</p> <p>13 portion and the ingredient cost portion; is that</p> <p>14 correct?</p> <p>15 A. Can you ask that question again?</p> <p>16 Q. If you want to evaluate the adequacy of</p> <p>17 a reimbursement to a Medicaid provider for</p> <p>18 dispensing a drug, you need to consider both the</p> <p>19 ingredient portion, the ingredient cost portion</p> <p>20 and the dispensing fee portion of the</p> <p>21 reimbursement payment; is that correct?</p> <p>22 MS. HEALY SMITH: Objection.</p>	<p>1 referring to the time that the 1994 study was</p> <p>2 done?</p> <p>3 BY MR. CYR:</p> <p>4 Q. That is correct.</p> <p>5 A. My recollection of 1994 was that</p> <p>6 Medicaid programs were answering to legislators</p> <p>7 as to why our dispensing fees were higher than</p> <p>8 other commercial payors.</p> <p>9 Q. So -- but that wasn't really my</p> <p>10 question.</p> <p>11 The question was whether dispensing</p> <p>12 fees were adequate to cover dispensing costs or</p> <p>13 whether there was knowledge among Medicaid</p> <p>14 providers whether dispensing fees were adequate,</p> <p>15 sufficient to cover dispensing costs?</p> <p>16 MS. HEALY SMITH: Objection.</p> <p>17 THE WITNESS: My recollection is that</p> <p>18 Medicaid officials realized that current</p> <p>19 dispensing fees of the time were not sufficient</p> <p>20 to cover the dispensing function, the cost</p> <p>21 associated with the dispensing function.</p> <p>22 BY MR. CYR:</p>
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<p>1 THE WITNESS: I'm not sure I would</p> <p>2 agree with how you phrased what the approach</p> <p>3 would be for consideration of a provider. I</p> <p>4 would look at the total fee that the provider is</p> <p>5 compensated.</p> <p>6 BY MR. CYR:</p> <p>7 Q. And what would the total fee include?</p> <p>8 A. The total fee would include the</p> <p>9 ingredient cost and the dispensing fee.</p> <p>10 Q. So if a dispensing fee was inadequate</p> <p>11 to cover a provider's cost of dispensing, those</p> <p>12 costs could be covered by the ingredient portion</p> <p>13 of the reimbursement payment; is that correct?</p> <p>14 MS. HEALY SMITH: Objection.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. CYR:</p> <p>17 Q. Was there knowledge among state</p> <p>18 Medicaid officials at this time that dispensing</p> <p>19 fees paid by state Medicaid programs were not</p> <p>20 adequate to cover dispensing costs for drugs?</p> <p>21 MS. HEALY SMITH: Objection.</p> <p>22 THE WITNESS: And at this time you're</p>	<p>1 Q. Was that seen as a problem by Medicaid</p> <p>2 officials at the time?</p> <p>3 MS. HEALY SMITH: Objection.</p> <p>4 BY MR. CYR:</p> <p>5 Q. Strike that.</p> <p>6 Was that seen as a problem in terms of</p> <p>7 ensuring adequate participation in the Medicaid</p> <p>8 program by providers?</p> <p>9 MS. HEALY SMITH: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. CYR:</p> <p>12 Q. And was that because the -- there was a</p> <p>13 margin in the ingredient portion cost of the</p> <p>14 reimbursement payment?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever heard of the term cross</p> <p>17 subsidization in connection with the ingredient</p> <p>18 portion as a way to make up for inadequate</p> <p>19 dispensing fees?</p> <p>20 A. I'm not sure that I've heard that</p> <p>21 specific term but I would agree that it probably</p> <p>22 applies to the situation.</p>

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<p>1 that led to the 1996 report were consistent with</p> <p>2 your understanding that AWP did not represent</p> <p>3 actual acquisition prices for pharmaceutical</p> <p>4 products; is that correct?</p> <p>5 MS. HEALY SMITH: Objection.</p> <p>6 THE WITNESS: That is what I stated</p> <p>7 earlier. That is correct.</p> <p>8 BY MR. CYR:</p> <p>9 Q. Would it be fair to say that at that</p> <p>10 time you understood that AWP had no relation to</p> <p>11 actual acquisition costs for pharmaceuticals?</p> <p>12 A. I don't believe I stated that and I'm</p> <p>13 not sure that I ever would state that.</p> <p>14 MS. RAMSEY: I believe -- could the</p> <p>15 court reporter reread the question. I don't</p> <p>16 think that was the exact question.</p> <p>17 BY MR. CYR:</p> <p>18 Q. Yes, my question wasn't did you testify</p> <p>19 to that before, but was it your understanding at</p> <p>20 the time, at the time of the 1995 meeting, that</p> <p>21 AWP had no relation to actual acquisition costs?</p> <p>22 A. No, I believe there's a relationship --</p>	<p>1 Was it DMAA's understanding at that</p> <p>2 time that AWP did not reflect actual acquisition</p> <p>3 cost?</p> <p>4 A. I would suggest that DMAA regarded me</p> <p>5 as their expert and they would have had the same</p> <p>6 opinion as mine because they would have looked to</p> <p>7 me for guidance, so whatever my opinion was</p> <p>8 pretty much was at that time what would be</p> <p>9 accepted.</p> <p>10 Q. Okay. When did you first gain the</p> <p>11 understanding that AWP didn't reflect actual</p> <p>12 acquisition cost?</p> <p>13 MS. HEALY SMITH: Objection.</p> <p>14 THE WITNESS: I would say that when I</p> <p>15 was hired in 1993 and realized that the state had</p> <p>16 a limit of AWP -- AWP minus 5.61 is the maximum</p> <p>17 that they would allow the estimated acquisition</p> <p>18 or AAC to be, that that was my tip-off that AWP</p> <p>19 did not reflect AAC.</p> <p>20 BY MR. CYR:</p> <p>21 Q. Okay. Is it your understanding today</p> <p>22 that AWP has no predictable relationship to</p>
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<p>1 I believed at the time that there was a</p> <p>2 relationship of some nature.</p> <p>3 Q. But it was your understanding that AWP</p> <p>4 did not reflect actual acquisition costs; is that</p> <p>5 correct?</p> <p>6 A. That's --</p> <p>7 MS. HEALY SMITH: Objection.</p> <p>8 THE WITNESS: That's correct.</p> <p>9 BY MR. CYR:</p> <p>10 Q. Is that -- was it the understanding of</p> <p>11 DMAA at that time that AWP did not reflect actual</p> <p>12 acquisition costs?</p> <p>13 MS. HEALY SMITH: Objection.</p> <p>14 THE WITNESS: I'm sorry, can you state</p> <p>15 the question one more time?</p> <p>16 BY MR. CYR:</p> <p>17 Q. Was it the position of DMAA at that</p> <p>18 time that AWP did not reflect actual acquisition</p> <p>19 costs?</p> <p>20 MS. HEALY SMITH: Objection.</p> <p>21 BY MR. CYR:</p> <p>22 Q. Strike that.</p>	<p>1 actual acquisition costs?</p> <p>2 MS. HEALY SMITH: Objection.</p> <p>3 THE WITNESS: I know of no pattern that</p> <p>4 could be put to the AWP to approximate AAC.</p> <p>5 BY MR. CYR:</p> <p>6 Q. Would you say over time -- have you</p> <p>7 come to understand as a general rule that --</p> <p>8 strike that.</p> <p>9 Over time, has your understanding --</p> <p>10 strike that.</p> <p>11 Over time, have you come to understand</p> <p>12 that -- well, let me ask it this way.</p> <p>13 Do you believe now that actual</p> <p>14 acquisition costs, the discount off of AWP --</p> <p>15 strike that.</p> <p>16 Do you understand actual acquisition</p> <p>17 cost to be on average a greater discount off of</p> <p>18 AWP today than you understood it to be in 1993</p> <p>19 when you started at Delaware Medicaid?</p> <p>20 MS. HEALY SMITH: Objection.</p> <p>21 THE WITNESS: I would not say that is</p> <p>22 my understanding.</p>

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UNITED STATES DISTRICT COURT  
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<p>1 begin receiving these at some point?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall when that was?</p> <p>4 MS. SHUTTEE: Strike that -- I'm sorry.</p> <p>5 I said strike that. That's not what I meant to</p> <p>6 say.</p> <p>7 Excuse me. When you said receiving</p> <p>8 these, did you --</p> <p>9 MS. RAMSEY: Medicaid Pharmacy</p> <p>10 Bulletins.</p> <p>11 MS. SHUTTEE: -- mean these from</p> <p>12 Lederle or these from Parke-Davis or these from</p> <p>13 another provider?</p> <p>14 MS. RAMSEY: Any Medicaid pharmacy</p> <p>15 provider.</p> <p>16 MS. HEALY SMITH: Any Medicaid.</p> <p>17 Thank you very much. Pardon for my</p> <p>18 interruption.</p> <p>19 THE WITNESS: My recollection of</p> <p>20 receiving Medicaid Pharmacy Bulletin goes fairly</p> <p>21 back to when I first started. They were valuable</p> <p>22 publications, but exactly when I started to</p>	<p>1 function and more subject to other facets of</p> <p>2 delivering health care.</p> <p>3 Q. Such as what?</p> <p>4 A. Such as delivery.</p> <p>5 Q. And what about compounding?</p> <p>6 A. Preparation is what's listed here. And</p> <p>7 in some situations preparation may be longer,</p> <p>8 yes.</p> <p>9 I also would disagree with patient</p> <p>10 instruction being part of the dispensing</p> <p>11 application or function for these products. In</p> <p>12 most situations that I am aware of with IV-</p> <p>13 administered drugs, you're going to have a home</p> <p>14 health component, such as a visiting nurse, and,</p> <p>15 therefore, I believe that the charges associated</p> <p>16 with patient instructions would be done onsite at</p> <p>17 the home or the facility where the person was</p> <p>18 receiving the drug.</p> <p>19 Q. So you do agree that there are</p> <p>20 additional costs and services that home IV</p> <p>21 providers would incur versus a traditional retail</p> <p>22 pharmacist dispensing a drug; is that correct?</p>
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<p>1 receive them, I don't know.</p> <p>2 BY MS. RAMSEY:</p> <p>3 Q. Okay.</p> <p>4 A. It would have been in the early to mid-</p> <p>5 '90s.</p> <p>6 Q. Now, the first column, the title is</p> <p>7 home intravenous IV reimbursement is a complex</p> <p>8 issue for Medicaid Pharmacy Programs.</p> <p>9 And then the second paragraph it</p> <p>10 states, because home IV therapy involves a host</p> <p>11 of additional pharmacy services; storage,</p> <p>12 preparation, delivery, patient instruction, et</p> <p>13 cetera, it is generally agreed that it is more</p> <p>14 expensive to dispense this type of medication</p> <p>15 than to dispense other outpatient drugs.</p> <p>16 Did I read that correctly?</p> <p>17 A. You read it correctly.</p> <p>18 Q. And do you agree with that sentence?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. Because some of the functions that are</p> <p>22 mentioned are not specific to the dispensing</p>	<p>1 MS. HEALY SMITH: Objection.</p> <p>2 THE WITNESS: Yes. To some degree.</p> <p>3 BY MS. RAMSEY:</p> <p>4 Q. How did Delaware reimburse provider of</p> <p>5 home IV medications --</p> <p>6 MS. HEALY SMITH: Objection.</p> <p>7 BY MS. RAMSEY:</p> <p>8 Q. -- during the relevant time period?</p> <p>9 A. Can you redefine the relevant time</p> <p>10 period?</p> <p>11 Q. Beginning in 1991 and going through</p> <p>12 approximately 2001.</p> <p>13 A. We reimbursed the pharmacy providers</p> <p>14 for the ingredient costs plus a \$3.65 dispensing</p> <p>15 fee.</p> <p>16 Q. Were there any additional -- strike</p> <p>17 that.</p> <p>18 Did Delaware provide any additional</p> <p>19 reimbursement or compensation other than the</p> <p>20 ingredient costs and the \$3.25 dispensing fee?</p> <p>21 A. We reimbursed a dispensing fee of</p> <p>22 \$3.65.</p>

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<p>1 Q. Sixty-five. I'm sorry.</p> <p>2 A. That is all we reimbursed for the</p> <p>3 pharmaceutical.</p> <p>4 Q. So all providers in Delaware were</p> <p>5 reimbursed under the same formula, regardless of</p> <p>6 the pharmacy type; is that correct?</p> <p>7 A. Correct. I'm sorry. To what year</p> <p>8 again, just to double-check?</p> <p>9 Q. I believe we were talking about 1991</p> <p>10 through the end of 2001.</p> <p>11 A. Okay. Good. Yes.</p> <p>12 Q. After 2001, did this change?</p> <p>13 A. It was 2003 where we split out the</p> <p>14 reimbursement module to traditional and</p> <p>15 nontraditional.</p> <p>16 Q. Now, was Delaware aware that other</p> <p>17 states provided additional reimbursement to</p> <p>18 nontraditional pharmacies, such as home IV</p> <p>19 pharmacies, to compensate them for increased</p> <p>20 dispensing costs?</p> <p>21 MS. HEALY SMITH: Objection.</p> <p>22 THE WITNESS: I think the Division was</p>	<p>1 the State of Washington and in the general</p> <p>2 Delaware region.</p> <p>3 But as far as the work effort for a</p> <p>4 pharmacy in Washington compared to the work</p> <p>5 effort in Delaware, that should be the same,</p> <p>6 regardless of where in the country the work was</p> <p>7 being performed.</p> <p>8 BY MS. RAMSEY:</p> <p>9 Q. And I believe you tested [sic]</p> <p>10 yesterday that Delaware's approach to</p> <p>11 reimbursement was an in-the-aggregate system; is</p> <p>12 that correct?</p> <p>13 MS. HEALY SMITH: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MS. RAMSEY:</p> <p>16 Q. What did you mean by an aggregate</p> <p>17 system?</p> <p>18 A. I believe that I was referencing</p> <p>19 aggregate system and methodology when we were</p> <p>20 talking about the preparation for the change in</p> <p>21 pricing methodology that took place in 1997. So</p> <p>22 we -- we talked about how was that decision made</p>
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<p>1 aware that there were different approaches to</p> <p>2 reimbursing for the services, and I would agree</p> <p>3 that the Division would know that some Medicaid</p> <p>4 Programs had a compounding dispensing fee</p> <p>5 separate and unique from their regular dispensing</p> <p>6 fee, yes, I would agree to that.</p> <p>7 BY MS. RAMSEY:</p> <p>8 Q. Now, Delaware did not believe that it</p> <p>9 was significantly cheaper for nontraditional</p> <p>10 pharm -- pharmacies to operate in Delaware versus</p> <p>11 in the State of Washington, is that fair to say?</p> <p>12 MS. HEALY SMITH: Objection.</p> <p>13 THE WITNESS: Can you read back one</p> <p>14 more time?</p> <p>15 (Requested testimony read back.)</p> <p>16 MS. RAMSEY: I believe I had, for</p> <p>17 example, in the State of Washington.</p> <p>18 THE WITNESS: My only concern in why</p> <p>19 I'm pausing to make sure that I answer the</p> <p>20 question correctly is, I would believe that the</p> <p>21 Division would consider that there may be a</p> <p>22 difference in salaries for pharmacists between</p>	<p>1 to change the methodology, and that's where I was</p> <p>2 referencing in the aggregate.</p> <p>3 Q. Because before 1997, you reimbursed</p> <p>4 based on AAC plus a dispensing fee, or usual and</p> <p>5 customary charge, whichever was lower; is that</p> <p>6 correct?</p> <p>7 A. Correct. Given that we also included</p> <p>8 FUL, but basically, yes, you're stating this</p> <p>9 correctly.</p> <p>10 Q. Okay. And so there was a change in</p> <p>11 1997 where you went to a lower-of system, --</p> <p>12 THE COURT REPORTER: Lower? I'm sorry?</p> <p>13 Lower?</p> <p>14 MS. RAMSEY: A lower-of system.</p> <p>15 BY MS. RAMSEY:</p> <p>16 Q. -- which was the lower of the DMAC, the</p> <p>17 FUL, the UNC or the AWP minus 12.5 methodology;</p> <p>18 is that correct?</p> <p>19 A. I just -- number one, it was 12.9</p> <p>20 percent.</p> <p>21 Q. 12.9.</p> <p>22 A. And we used a lower-of approach prior</p>

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